



Mission

The Washington Court Appointed Special Advocate Association (“Washington CASA”) supports and promotes court appointed volunteer advocacy so every child who has experienced abuse or neglect can be safe, have a permanent home, and the opportunity to thrive.

Statement on Representation and Advocacy for Children in Dependency Proceedings

Executive Summary

CASA volunteers in Washington provide high-quality best-interest advocacy in dependency proceedings (including petitions for guardianship or seeking termination of parent-child relationships) for children who have experienced abuse or neglect. Some children in dependency proceedings have an attorney appointed for them and attorneys can provide great value for these children. Washington law generally leaves appointment of attorneys for children in dependency proceedings to the discretion of judges. Washington CASA supports maintaining this largely discretionary approach to appointment because some cases would benefit more from the appointment of an attorney, while in other cases the CASA volunteer can adequately advocate for the needs of the child without an attorney.

To make the best use of scarce resources, the state should allocate funds to appoint stated-interest attorneys to those cases that would benefit most from the attorney representation. Washington does not currently have statewide guidance to identify those cases most suited for appointment of attorneys. Washington CASA recommends the formation of a working group to address that gap.

Legal Framework

In Washington State, the court must appoint a Guardian ad Litem (either an attorney or a CASA volunteer) to advocate for the best interests of children who are subject to dependency proceedings. Generally speaking, the court does not have to appoint an attorney to represent the child’s position (also known as the child’s stated interests).

CAPTA

The federal Child Abuse Prevention and Treatment Act (CAPTA) requires that every child in a dependency proceeding have a best-interest advocate – either a CASA volunteer or a Guardian ad Litem attorney. The relevant section of CAPTA, 42 U.S.C.A. sec. 5106a(b)(2)(B)(xiii), provides:

... that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings - I. to obtain first-hand, a clear understanding of the situation and needs of the child; and II. to make recommendations to the court concerning the best interests of the child” . . .

CAPTA does not require the appointment of a stated-interest attorney.

RCW 13.34.100 – Appointment of a CASA Volunteer or an Attorney

Section 13.34.100 of the Revised Code of Washington (RCW) addresses the appointment of both best-interest advocates and stated-interest attorneys for children in dependency proceedings. Section 13.34.100(1) addresses the appointment of a best-interest advocate, requiring that the court “appoint a guardian ad litem for a child who is the subject of an action under this chapter,” allowing either a volunteer or an attorney to fill that role. The Guardian ad Litem “represent[s] and [is] an advocate for the best interests of the child.” 13.34.105.

In addition to appointing a best-interest advocate, “the court may appoint an attorney to represent the child's position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the department.”

13.34.100(7)(a). The RCW requires appointment of an attorney when a child remains in a dependency proceeding six months after the court has terminated parental rights.

13.34.100(6)(a). Additionally, a child aged twelve or older has the right to request counsel. 13.34.100(7)(c).

In re E.H.

In 2018, the Washington Supreme Court affirmed that children have no categorical right to counsel in dependency proceedings. See *In re E.H.*, 427 P.3d 587, 596 (Wash. 2018). The court also affirmed that courts should assess the need for counsel on a case-by-case basis “taking into account the specific interests at risk in each instance, the additional decisional accuracy that would be afforded by appointing an attorney, and the government’s interest in not appointing counsel.” See *In re E.H.*, 427 P.3d 587, 596-97 (Wash. 2018). The court set forth a non-exhaustive list of interests that indicate that a child should have counsel:

- the age of the child,

- whether the child is in legal or physical custody of the State,
- whether the child's stated interests are aligned with the GAL's assessment of the child's best interest (if a GAL has been appointed) or with another represented party's desires,
- whether the child disputes the facts that form a basis for the dependency determination, and
- whether the child presents a complex argument against the State's proposed action, and the issues that are actually disputed or to be addressed in the hearing.

In re E.H., 427 P.3d 587, 596-97 (Wash. 2018).

The Roles of CASA Volunteers and Attorneys

CASA child advocacy goes beyond reporting the child's stated views or positions to the court and advocating to ensure the child's needs are addressed. The CASA advocate meets with the child regularly in multiple environments. CASA volunteer advocacy efforts reach beyond the court proceeding, by also attending educational meetings, Department of Children, Youth and Families (DCYF)-hosted family team decision meetings, Local Indian Child Welfare Advisory Committee (LICWAC) staffing, connecting with parents, and checking in with the child's medical and mental health providers, placements, relatives, and observing family time. The CASA volunteer leaves no stone unturned as they gather relevant information about the child's situation in order to make informed recommendations to the court while ensuring the child's individual and unique needs are addressed.

Meanwhile, the stated-interest attorney represents the child through legal issues in the case. The nature of the relationship created by the attorney-client relationship means that the attorney might have to keep certain information confidential from the court. This differs from the role of the CASA volunteer, who provides the court with robust information on the child gleaned from the conversations with everyone in the child's circle and provides that information in a CASA court report to aid the court in making well-informed decisions for the child and his or her family. Additionally, the stated-interest attorney need only convey the child's stated interests, while the CASA volunteer informs the court of both the child's stated interests as well as their fact-based recommendations regarding the child's best interest.

Maximizing the Benefits of Stated-Interest Legal Representation

Washington CASA supports the appointment of stated-interest attorneys in appropriate circumstances. Attorneys provide vital support in working through complicated legal issues, including, for example, those that can arise for children with disabilities, tribal affiliations, educational challenges, immigration cases, or out-of-state parents. Additionally, some courts have recognized the value of legal representation for older children, including those aging out of foster care without a permanent placement. Washington CASA acknowledges that each family is different and that each dependency proceeding is different and that these differences are accounted for in the flexibility

afforded to trial courts under the current case-by-case regime. See *In re E.H.*, 427 P.3d 587, 596-97 (Wash. 2018). There may be cases that do not require the appointment of an attorney, which would use scarce state resources, but instead rely on the high-quality best-interest advocacy provided by CASA volunteers.

The child's CASA volunteer is often in the best position to identify the need for counsel. CASA volunteers typically remain appointed throughout the entirety of the case (while the foster parents, caseworker and other service providers can change frequently). CASA volunteers maintain regular and consistent contact with the children to whom they are appointed and develop relationships built on trust. When legal issues arise, some CASA programs have attorneys available to represent the CASA volunteers to address many of the the legal issues without the need for a stated-interest attorney. If the CASA program does not have an attorney, when the positions of the child and the CASA volunteer do not align, or when the case raises a legally complex issue, the CASA volunteer would then bring such legal issues to the attention of the court and request appointment of counsel for the child.

The Need for More Support for Best-Interest Advocacy

In Washington State, CASA volunteers fulfill the requirement under CAPTA and RCW sec. 13.34.100 that the court appoint a guardian ad litem to children in dependency proceedings. Unfortunately, not every child in a dependency proceeding in Washington has a CASA volunteer due to lack of adequate resources needed to recruit, train, and support a sufficient number of volunteers. This means that many children who have experienced abuse or neglect do not benefit from this vital advocacy required by CAPTA. To meet that statutory mandate, CASA programs require additional funding for volunteer recruitment, training, and supervision.

The Value of Best-Interest Advocacy

This model of professionally supervised volunteer advocates provides a cost-effective approach. Each newly funded CASA supervisor/volunteer coordinator in a local program can supervise up to 30 new volunteers; each CASA volunteer is able to advocate for unserved children in up to two cases. Using a volunteer model such as CASA allows advocacy for up to 80 unserved children for each funded supervisor/coordinator position.

The long-range outcomes for children with a CASA volunteer are that children have a safe and permanent home and that children don't fall through the cracks of the very system that is in place to protect them. Nationally, children who have experienced abuse or neglect fare better with a CASA/GAL volunteer by their side.

The following is a summary of independent academic studies that have been conducted to evaluate the effectiveness of best-interest advocacy and the CASA/GAL network nationwide. The studies selected are based on their high methodological quality.

Addressing Trauma

- Cases assigned to a CASA/GAL volunteer tend to involve the most serious cases of maltreatment, in which the children were more at risk.¹
- A child with a CASA/GAL volunteer has significantly less placements than a child without a CASA/GAL volunteer.²
- CASA/GAL volunteers are highly effective in getting their recommendations accepted in court. In four out of five cases, all or almost all CASA/GAL volunteer recommendations are accepted.³
- Judges report the impact of CASA/GAL volunteers is most pronounced in “promoting long-term well-being” (92.2%), followed by “appropriate services to child and family” (83%) and “psychological well-being” (79.9%).⁴
- Over 93% of judges report a very positive overall experience with the CASA/GAL program.⁵

Reaching Permanent Homes

A child with a CASA/GAL volunteer is:

- Less likely to reenter the child welfare system. The proportion of reentries is consistently reduced by half.⁶
- More likely to achieve permanency.⁷

Enabling Well Being Over Time

- When a CASA/GAL volunteer is assigned, a higher number of services are ordered for children and families.⁸
- A child with a CASA/GAL volunteer is more likely to have better outcomes: children tended to perform better academically and behaviorally in school as

¹ Office of the Inspector General Report, US Department of Justice Office of the Inspector General. *Audit Report Results for CASA Advocacy*. Washington, DC. January, 2007.

² Gershun, Martha, and Claire Terrebonne. *Child welfare system interventions on behalf of children and families: Highlighting the role of court appointed special advocates*. Current problems in pediatric and adolescent health care, Volume 9. 2018.

³ Gershun, Martha, and Clair Terrebonne.

⁴ Weiner, D., Farrell, A., Gitlow, E., Small, L., Kim, K., Anderson, C., & Goerge, R. *The Court Appointed Special Advocate (CASA) Program: Judicial Perspectives Survey and the Path to Evidence*. Chapin Hall at the University of Chicago: Chicago, IL. 2020.

⁵ Weiner, D., Farrell, A., Gitlow, E., Small, L., Kim, K., Anderson, C., & Goerge, R.

⁶ Gershun, Martha, and Claire Terrebonne.

⁷ Ibid.

⁸ Ibid.

measured by whether or not they passed all of their courses, whether or not they were expelled, and their conduct performance.⁹

- Children and youth assigned a CASA/GAL volunteer reported significantly higher levels of hope. A child's hope has been linked to numerous positive outcomes such as academic success, overall wellbeing, increases in self-control, positive social relationships and optimism.¹⁰

Call for Guidance and Resources

Washington CASA recognizes the need to develop more detailed guidance identifying those cases that would benefit most from the appointment of stated-interest counsel for children in dependency proceedings. To that end, Washington CASA supports convening a working group consisting of key stakeholders to develop that guidance. Additionally, the working group may develop documents defining the role of the child's attorney in advocating for the child, the resources necessary for children's attorneys to succeed, and best practices for collaboration between the child's attorney and the CASA volunteer. The working group will also need to consider the role and duty of advocates, both attorneys and CASA volunteers, in undoing the disproportionality in dependency cases that sees Black and Native American children more likely to experience family separation and worse outcomes and other inequities in the system.

One of the guiding principles to which CASA/GAL programs adhere is recognizing the importance of collaboration, cooperation, and coordination with our partners and stakeholders. A common goal on which we can all agree is that it is imperative to improve services for children and their families, and advocate for needed change in the conditions which adversely affect the children served. WA CASA looks forward to continuing to build strong working relationships so that we can provide robust and effective advocacy for the child, especially when we all understand and value our respective roles and have adequate resources.

⁹ Waxman, H.; Houston, R.; Proffitt, S.; Sanchez, B. *The Long-Term Effects of the Houston Child Advocates, Inc., Program on Children and Family Outcomes*. Child Welfare. 2009.

¹⁰ Stanley, Jessica, and Chan M. Hellman. *Nurturing Hope Among Children Experiencing Abuse & Neglect: Examining the Effects of CASA Volunteers*. 2019.